

FILED

BEFORE THE DEPARTMENT OF INSURANCE  
STATE OF NEBRASKA

FEB 16 2006

NEBRASKA DEPARTMENT  
OF INSURANCE

STATE OF NEBRASKA  
DEPARTMENT OF INSURANCE,

PETITIONER,

VS.

TRANSAMERICA LIFE INSURANCE  
COMPANY,

RESPONDENT.

CONSENT ORDER

CAUSE NO. C-1547

In order to resolve this matter, the Nebraska Department of Insurance ("Department"), by and through its attorney, Martin W. Swanson and Transamerica Life Insurance Company, ("Respondent"), mutually stipulate and agree as follows:

JURISDICTION

1. The Department has jurisdiction over the subject matter and Respondent pursuant to Neb. Rev. Stat. §44-101.01, §44-303 and §44-1536 et seq and Title 210 NAC Chapter 61.
2. Respondent is a licensed insurance company under the laws of Nebraska at all times material hereto.

STIPULATIONS OF FACT

1. The Department initiated this administrative proceeding by filing a petition styled State of Nebraska Department of Insurance vs. Transamerica Life Insurance Company, Cause Number C-1547 on November 16, 2005. A copy of the petition was served upon the Respondent at the Respondent's address registered with the Department by certified mail, return receipt requested.

Feb 13, 2006 ACCT# 8521 \$750.00  
NO-INVOICE 58585 TRANS 1556787  
TRANSAMERICA LIFE INSURANCE COMPANY  
CHECK# 4567996

2. Respondent violated Neb. Rev. Stat. §44-1540(2) and

Title 210 NAC Chapter 61 §008.02 and Title 210 NAC Chapter 61 §008.03, as a result of the following conduct:

- a. An individual (hereinafter "Insured") purchased a Long-Term Care Insurance Policy, which was issued by PFL Life Insurance Company (now Transamerica) with an effective date of January 20, 1998. The policy has a 100-day elimination period.
- b. On September 20, 2004, Insured was confined to an Assisted Living Facility (ALF) due to a diagnosis of Alzheimer's disease. ALF has an Alzheimer's unit designation as part of its Assisted Living Facility license issued by the State of Nebraska.
- c. On October 12, 2004, Respondent received the claim, the doctor notes, plan of care and other information from ALF. On October 15, 2004, Respondent sent an acknowledgement of claim to Insured.
- d. During a period of time between October 27, 2004 and November 9, 2004, a series of communications between ALF and Respondent occurred. During that time, Respondent learned that ALF had an Alzheimer's unit. On November 9, 2004, Respondent's records reveal that ALF sent them documentation, per the request of Respondent, that ALF was licensed as an Assisted Living Facility. Respondent also received a facility verification form indicating that ALF was an Assisted Living Facility.
- e. On November 9, 2004, Respondent sent a letter to Insured. In that letter, Respondent informed Insured that further investigation of the facility was needed in order to determine whether or not this particular facility was covered under his long-term care policy. On November 22, 2004, Respondent scheduled a facility evaluation for Insured on November 23, 2004. A report on the facility evaluation was issued December 2, 2004, in which ALF represented to Respondent that it was licensed to engage primarily in providing nursing care and was providing 24-hour nursing services.
- f. On December 1, 2004, Nancy Brown from Nebraska Health and Human Services Licensing and Credentialing Division, faxed in a response to Respondent in which she informed Respondent that, in general, Assisted Living Facilities in the State of Nebraska are not licensed to engage primarily in providing nursing care to inpatients and that they cannot provide 24-hour-a-day nursing services. Ms. Brown further explained that by statute, Assisted Living Facilities could not provide complex nursing interventions. An assisted living facility may have licensed nurses on duty

24 hours a day, however, only personal care, activities of daily living and health maintenance activities can be provided by facility staff.

- g. On December 2, 2004, Insured insurance agent, Les Johnson, called Respondent and asked about the status of the claim and was told that a determination had yet to be made. According to Respondent, the December 2, 2004 facility evaluation was received on December 3, 2004, and was forwarded to their Consumer Affairs division for a "second opinion."
- h. On January 10, 2005, Respondent informed Insured that conflicting information was provided to them by ALF and that more information was needed from the facility in order to determine whether or not there was coverage for the ALF. There was not written communication during the entire month of December to Insured or Insured's wife by Respondent and, in fact, no written communication on the status of the claim from November 9, 2004 through January 10, 2005.
- i. Insured and his wife filed a complaint with the Nebraska Department of Insurance. Pursuant to the investigation, Cynthia Williamson, an insurance investigator with the Nebraska Department of Insurance, asked several questions of Respondent, including why there was significant delay in responding to the claim and why Respondent did not contact Insured with regard to the claim within the required time frames. Respondent wrote back:

"As for the apparent unintentional delay that was experienced while this claim was being reviewed, we have no satisfactory explanation for the unusual length of time between December and January for which there is no documentation to indicate that information was timely communicated with the [Insured]."

Respondent also told the Department that this was an isolated event due to staffing issues during the timeframe in question. They stated:

"However, in reviewing our staffing at that time, we did have at least [person] in the Consumer Affairs area being trained during the December-January period (and not fully productive at the time), so that we could better maintain the timeliness component of the service level standards that we strive to achieve and routinely maintain. Nevertheless, we can assure you that this isolated event is not typical of our claims handling practices and that our Claims Management has reinforced its commitment to maintain timely service level standards in order to ensure that such a delay in response time does not happen again."

- 3. Respondent was informed of their right to a public hearing. Respondent waives that right, and enters into this Consent Order freely and voluntarily. Respondent understands and

acknowledges that by waiving their right to a public hearing, Respondent also waives their right to confrontation of witnesses, production of evidence, and judicial review.

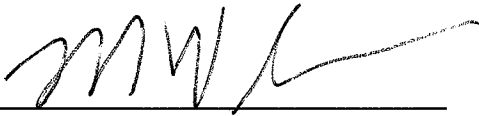
4. Respondent does not admit nor deny the allegations contained stated in Paragraph #2 above, however, for the purposes of settling this matter, agree to terms and conditions of the consent order.

#### CONCLUSIONS OF LAW

Respondent's conduct as alleged above constitutes violations of Neb. Rev. Stat. §44-1540(2), Title 210 NAC Chapter 61 §008.02 and Title 210 NAC Chapter 61 §008.03.

#### CONSENT ORDER

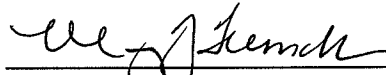
It is therefore ordered by the Director of Insurance and agreed to by Respondent, Transamerica Life Insurance Company, that they shall pay an administrative fine of \$750. The fine shall be paid in total within thirty days after the Director of the Department of Insurance affixes their signature to this document and approves said consent agreement. Additionally, Transamerica Life Insurance Company shall continue to make available, upon the request of an insured, a copy of covered facilities, per the terms, conditions and limitations of the insured's policy that would qualify as an covered facility for purposes of claim payment in the event that the insured would need the services of a long-term care facility. The insured shall be notified by Transamerica Life Insurance Company that a list of covered facilities is available upon the insured's written request. The Department of Insurance will continue to retain jurisdiction over this matter and shall prosecute any other violations for failure to comply with this Consent Order. In witness of their intention to be bound by this Consent Order, each party has executed this document by subscribing their signature below.



Martin W. Swanson, #20795  
Attorney for Nebraska  
Department of Insurance  
941 "O" Street, Suite 400  
Lincoln, Nebraska 68508  
(402) 471-2201

2/15/06

Date




Mary J. Tresnak  
Assistant General Counsel  
Vice President - Compliance

February 9, 2006

Date

State of Iowa )  
County of Linn ) ss.

On this 9th day of February, 2006, Mary J. Tresnak on behalf of Respondent, Transamerica Life Insurance Company, personally appeared before me and read this Consent Order, executed the same and acknowledged the same to be their voluntary act and deed.

  
Notary Public

I hereby certify that the foregoing Consent Order is adopted as the Final Order of the  
Nebraska Department of Insurance in the matter of State of Nebraska Department of Insurance vs.  
Transamerica Life Insurance Company, Cause No. C-1547.

STATE OF NEBRASKA  
DEPARTMENT OF INSURANCE

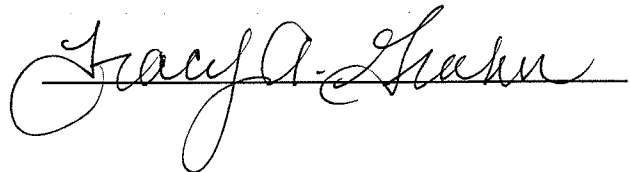


L. TIM WAGNER  
Director of Insurance

2/16/06  
Date

CERTIFICATE OF SERVICE

I hereby certify that a copy of the executed Consent Order was sent to the Respondent, at  
4333 Edgewood Road, NE, Cedar Rapids, IA 52499, by certified mail, return receipt requested on  
this 17<sup>th</sup> day of February, 2006.



RECEIVED  
FEB 21 2006  
CLERK OF DISTRICT COURT  
JUDICIAL DISTRICT NO. 1  
LINCOLN, NE